

## § 750.5

(ii) If any agency disagrees with the OC Chair's decision, the agency may escalate the decision by appealing to the Chair of the Advisory Committee on Export Policy for resolution. If such a request for escalation is not made within 5 days of the decision of the OC Chair, the Chair's decision will be final.

(2) *Escalation to the Advisory Committee on Export Policy (ACEP).* Requests for escalation to the ACEP must be in writing from an official appointed by the President with the advice and consent of the Senate, or a person properly acting in such capacity, and cite both the statutory and the regulatory basis for the appeal. The ACEP will review all relevant information and recommendations. The Chair of the ACEP will inform the reviewing agencies of the majority vote decision of the ACEP within 11 days from the date of receipt of the escalation request. Within 5 days of the decision, any dissenting agency may appeal in writing the ACEP's decision to the Secretary of Commerce in the Secretary's capacity as the Chair of the Export Administration Review Board. The written request must be made by the head of the agency requesting escalation and cite both the statutory and the regulatory basis for the appeal. Within the same period of time, the Secretary may initiate a meeting on his or her own initiative to consider a license application. In the absence of a timely appeal, the decision of the ACEP will be final.

(3) *Escalation to the Export Administration Review Board (EARB).* The EARB will review all relevant information and recommendations, and such other export control matters as may be appropriate. The Secretary of Commerce will inform the reviewing agencies of the majority vote decision of the EARB within 11 days from the date of receipt of the appeal. Within 5 days of the decision, any agency dissenting from the decision of the EARB may appeal the decision to the President. The appeal must be in writing from the head of the dissenting agency. In the absence of a

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timely appeal, the decision of the EARB will be final.

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## § 750.5 [Reserved]

### § 750.6 Denial of license applications.

(a) *Intent to deny notification.* If BIS intends to deny your license application, BIS will notify you in writing within 5 days of the decision. The notification will include:

- (1) The intent to deny decision;
- (2) The statutory and regulatory basis for the denial;
- (3) To the extent consistent with the national security and foreign policy of the United States, the specific considerations that led to the decision to deny the license application;
- (4) What, if any, modifications or restrictions to the license application would allow BIS to reconsider the license application;
- (5) The name of the BIS representative in a position to discuss the issues with the applicant; and
- (6) The availability of appeal procedures.

(b) *Response to intent to deny notification.* You will be allowed 20 days from the date of the notification to respond to the decision before the license application is denied. If you respond to the notification, BIS will advise you if, as a result of your response, the decision to deny has been changed. Unless you are so advised by the 45th day after the date of the notification, the denial will become final, without further notice. You will then have 45 days from the date of final denial to exercise the right to appeal under part 756 of the EAR.

### § 750.7 Issuance of licenses.

(a) *Scope.* A license authorizes only a specific transaction, or series of transactions, as described in the license application and any supporting documents. A license application may be approved in whole or in part or further limited by conditions or other restrictions appearing on the license itself or in the EAR.

(b) *Issuance of a license.* BIS may issue a license electronically via its Simplified Network Application Processing (SNAP-R) system or via paper or both electronically and via paper. Each license has a license number that will be shown on the license.

(c) *Changes to the license.* (1) The following non-material changes do not require submission of a “Replacement” license or any other notification to BIS. (If you wish to make any change not identified in this paragraph, you will need to submit a “Replacement” license in accordance with the instructions contained in Supplement No. 1 to part 748 of the EAR, Block 11):

(i) Decrease in unit price or total value;

(ii) Increase in price or quantity if permitted under the shipping tolerances in § 750.11 of this part;

(iii) Increase in price that can be justified on the basis of changes in point of delivery, port of export, or as a result of transportation cost, drayage, port charges, warehousing, currency fluctuations, etc.;

(iv) Establishment of unit or total price in conformance with a “price statement” on a license that permits price to be based on the market price at a specified date plus an exporter’s mark-up, or like basis;

(v) Change in intermediate consignee if the new intermediate consignee is located in the country of ultimate destination as shown on the license, except a change in, or addition of, an intermediate consignee involving a consolidated shipment;

(vi) Change in continuity of shipment by unloading from carrier at a country listed in Country Group B (see Supplement No. 1 to part 740 of the EAR) port not in the country of ultimate destination, without the designation of an intermediate consignee on the shipping documents and license, provided:

(A) The purpose is to transfer the shipment to another vessel, barge, or vehicle, solely for onforwarding to the country of destination shown on the shipping documents and the license;

(B) The shipment is moving on a through bill of lading;

(C) The carrier is not registered in, owned or controlled by, or under charter or lease to a country in Country

Group D:1 or E:2 (see Supplement No. 1 to part 740 of the EAR), or a national of any of these countries;

(D) The carrier retains custody of the shipment until it is delivered to the ultimate consignee; and

(E) The original bill of lading or air waybill first issued at the port of export is delivered with the shipment to the ultimate consignee;

(vii) Change in address of purchaser or ultimate consignee if the new address is located within the same country shown on the license; or

(viii) Change in ECCN, unit of quantity, or unit price, where necessary only for the purpose of conforming to an official revision in the CCL; or wording of the item description. This does not cover an actual change in the item to be shipped, or an increase in the total price or quantity on the license; or

(2) [Reserved]

(d) *Responsibility of the licensee.* The person to whom a license is issued is the licensee. In export transactions, the exporter must be the licensee, and the exporter-licensee is responsible for the proper use of the license, and for all terms and conditions of the license, except to the extent that certain terms and conditions are directed toward some other party to the transaction. In reexport or routed export transactions, a U.S. agent acting on behalf of a foreign principal party in interest may be the licensee; in these cases, both the agent and the foreign principal party in interest, on whose behalf the agent has acted, are responsible for the use of the license, and for all terms and conditions of the license, except to the extent that certain terms and conditions are directed toward some other party to the transaction. It is the licensee’s responsibility to communicate in writing the specific license conditions to the parties to whom those conditions apply. In addition, when required by the license, the licensee is responsible for obtaining written acknowledgment(s) of receipt of the conditions from the party(ies) to whom those conditions apply.

(e) *Prohibited use of a license.* No person convicted of a violation of any statute specified in section 11(h) of the EAA, at the discretion of the Secretary

of Commerce, may apply for any license for a period up to 10 years from the date of the conviction. See § 766.25 of the EAR.

(f) *Quantity of commodities authorized.* Unlike software and technology, commodities will be approved with a quantity or dollar value limit. The “Unit” paragraph within each CCL commodity entry will list a specific “Unit” for those commodities controlled by that entry. Any license resulting from a license application to export or reexport commodities will be licensed in terms of the specified “Unit”. If a commodity is licensed in terms of “\$ value”, the unit of quantity commonly used in trade may also be shown on the license. Though this unit may be shown on the approved license, the quantity of commodities authorized is limited entirely by the total dollar value shown on the approved license.

(g) *License validity period.* Licenses involving the export or reexport of items will generally have a 24-month validity period, unless a different validity period has been requested and specifically approved by BIS. Exceptions from the 24-month validity period include, license applications reviewed and approved as an “emergency” (see § 748.4 (h) of the EAR), license applications for items controlled for short supply reasons, and Special Comprehensive Licenses.

Emergency licenses will expire no later than the last day of the calendar month following the month in which the emergency license is issued. Licenses for items controlled for short supply reasons will be limited to a 12-month validity period. The expiration date will be clearly stated on the face of the license. If the expiration date falls on a legal holiday (Federal or State), the validity period is automatically extended to midnight of the first day of business following the expiration date. (See part 752 of the EAR for validity periods for Special Comprehensive Licenses.)

(1) *Extended validity period.* Validity periods in excess of 24 months generally will not be granted. BIS will consider granting a validity period exceeding 24 months when extenuating circumstances warrant such an extension, however, no changes will be ap-

proved related to any other particular on the license (e.g., parties to the transaction, countries of ultimate destination, etc.). For example, an extended validity period will generally be granted where the transaction is related to a multi-year project, when production lead time will not permit an export or reexport during the original validity period of the license, when an unforeseen emergency prevents shipment within the 24-month validity of the license, or for other similar circumstances. A continuing requirement to supply spare or replacement parts will not normally justify an extended validity period. Licenses issued in accordance with the emergency clearance provisions contained in § 748.4(h) of the EAR will not be extended. See § 752.9 of the EAR for information relating to the extension of a Special Comprehensive License.

(2) *Request for extension.* (i) The applicant must submit a letter in writing to request an extension in the validity period of a previously approved license. The subject of the letter must be titled: “Request for Validity Period Extension” and contain the following information:

(A) The name, address, and telephone number of the requestor;

(B) A copy of the original license, with the license number, validation date, and current expiration date legible; and

(C) Justification for the extension;

(ii) It is the responsibility of the applicant to ensure that all applicable support documents remain valid and are in the possession of the applicant. If the request for extension is approved, BIS will provide the applicant with a written response.

(h) *Specific types of licenses—(1) Licenses for temporary exports or reexports.* If you have been granted a license for the temporary export or reexport of items and you decide not to return the items to the United States, you must submit a license application requesting authorization to dispose of the items. Except when the items are to be used on a temporary basis at a new destination (and returned to the United States after such use), you must ensure that your license application is accompanied by all documents that would be

required if you had requested a license to export or reexport the same item directly to the new destination.

(2) *Intransit within the United States.* If you have been issued a license authorizing an intransit shipment (that does not qualify for the intransit provisions of License Exception TMP) through the United States, your license will be valid only for the export of the intransit shipment wholly of foreign origin and for which a Transportation and Exportation customs entry or an Immediate Exportation customs entry is outstanding.

(3) *Intransit outside the United States.* If you have been issued a license authorizing unloading or transit through a country listed in the General Prohibition Eight contained in §736.2(b)(8) of the EAR, and you did not know the identity of the intermediate consignee at the time of the original license application, you must notify BIS in writing once you have ascertained the identity of the intermediate consignee. Your notification must contain the original license number, and the complete name, address, and telephone number of the intermediate consignee. The written request must be submitted to BIS at the address listed in §748.1(d)(2) of the EAR.

(4) *Replacement license.* If you have been issued a “replacement license” (for changes to your original license not covered in paragraph (c) of this section), you must retain both the original and the replacement license.

(i) *Terminating license conditions.* Exporters or reexporters who have shipped under licenses with conditions that would not apply to an export under a License Exception or if no license was required, and foreign consignees who have agreed to such conditions, are no longer bound by these conditions when the licensed items become eligible for a License Exception or can be exported or reexported without a license. Items that become eligible for a License Exception are subject to the terms and conditions of the applicable License Exception and to the restrictions in §740.2 of the EAR. Items that become eligible for export without a license remain subject to the EAR and any export, reexport, or disposition of such items may only be made in ac-

cordance with the requirements of the EAR. Termination of license conditions does not relieve an exporter or re-exporter of its responsibility for violations that occurred prior to the availability of a License Exception or prior to the removal of license requirements.

(j) *Records.* If you have been issued a license you must retain the license, and maintain complete records in accordance with part 762 of the EAR including any licenses (whether used or unused, valid or expired) and all supporting documents and shipping records.

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#### § 750.8 Revocation or suspension of licenses.

(a) *Revocation.* All licenses for exports or reexports are subject to revision, suspension, or revocation, in whole or in part, without notice. BIS’s Office of Exporter Services may revoke any license in which a person who has been convicted of one of the statutes specified in section 11(h) of the EAA, at the discretion of the Secretary of Commerce, has an interest in the license at the time of the conviction. It may be necessary for BIS to stop a shipment or an export or reexport transaction at any stage in the process (e.g., in order to prevent an unauthorized export or reexport). If a shipment is already en route, it may be further necessary for BIS to order the return or unloading of such shipment at any port of call in accordance with the provisions of the EAA.

(b) *Return of revoked or suspended licenses.* If BIS revokes or suspends a license, the licensee shall return the license immediately upon notification that the license has been suspended or revoked. The license must be returned to BIS at the address listed in §748.1(d)(2) of the EAR, Attn: “Return of Revoked/Suspended License”. All applicable supporting documents and records of shipments must be retained by the licensee in accordance with the recordkeeping provisions of part 762 of